

Executive Summary

Introduction

The following is a summary of public comment received by the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Task Force regarding NEPA implementing practices and procedures. The comment period was July 9 to September 23, 2002. The Task Force received 739 responses—including letters, e-mails, and comments submitted over the CEQ website—of which 620 are original responses. The remaining 119 responses are form letters, all of which are instances of one form. The analysis provided in this document is based on the 620 original responses and one example of the form letter.

These responses have been analyzed using a process called content analysis, described below. Although this summary and accompanying list of public concerns attempts to capture the full range of public issues and concerns, it should be used with caution. Respondents are self-selected; therefore their comments do not necessarily represent the sentiments of the public as a whole. However, this report does attempt to provide fair representation of the wide range of views submitted. In considering these views, it is important for the public and decision makers to understand that this process makes no attempt to treat input as if it were a vote. Instead, the content analysis process ensures that every comment is considered at some point in the decision process.

Content Analysis Process

Content analysis is a method developed by a specialized Forest Service unit, the Content Analysis Team (CAT), for analyzing public comment. This method employs both qualitative and quantitative approaches. It is a systematic process designed to provide a mailing list of respondents, isolate specific comments by topic in each response,¹ evaluate similar comments from different responses, and summarize like comments as specific concern statements. The process also provides a relational database capable of reporting various types of information while linking comments to original letters.

Through the content analysis process CAT analysts strive to identify all relevant issues, not just those represented by the majority of respondents. The breadth, depth, and rationale of each comment are especially important. In addition to capturing relevant factual input, analysts try to capture the relative emotion and strength of public sentiment behind particular viewpoints, in order to represent the public's viewpoints and concerns as fairly as possible. CAT analysts organize the concern statements to facilitate systematic review and response by decision makers.

Project Background

On May 20, 2002, the Council on Environmental Quality established a NEPA Task Force (hereafter Task Force) composed of representatives from a variety of federal agencies. The purpose of the Task Force is to seek ways to improve NEPA analysis and documentation and to

¹ Responses refer to single, whole submissions from respondents—e.g., letters, emails, faxes, etc. Comments refer to identifiable expressions of concern made within responses.

foster improved coordination among all levels of government and the public. The Task Force identified five specific topic areas to gain input on certain aspects of NEPA implementation:

A. *Technology, Information Management, and Information Security*

1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses.
2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?
3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.
4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?
5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD ROM, website, public meeting, radio, television)? Explain the basis for your preferences.
6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., websites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of these tools (e.g., concerns about broad public access)?
7. What factors should be considered in balancing public involvement and information security?

B. *Federal and Intergovernmental Collaboration*

1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions.
2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?
3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

C. *Programmatic Analysis and Tiering*

1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers.
2. Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001 (further information on ISO 14001 can be found on the Web at: <http://es.epa.gov/partners/iso/iso.html>).

D. Adaptive Management/Monitoring and Evaluation Plans

1. What factors are considered when deciding to use an adaptive management approach?
2. How can environmental impact analyses be structured to consider adaptive management?
3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?
4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

E. Categorical Exclusions

1. What information, data, studies, etc., should be required as the basis for establishing a categorical exclusion?
2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?
3. Are improvements in the process agencies use to establish a new categorical exclusion necessary? If so, please describe them.

F. Additional Areas for Consideration: In addition to the topics described above, the NEPA Task Force will consider comments on NEPA practices that would improve and modernize NEPA implementation.

CEQ envisions the information gained by the Task Force will help federal agencies update their practices and procedures and to better integrate NEPA into decisionmaking.

Document Overview

The Executive Summary begins with general background information on the NEPA Task Force review process, proceeds with a general overview of public comment on NEPA implementation and planning processes, and follows with a discussion of respondents' main areas of concern. This summary is not intended to provide an exhaustive account of public concerns. Some of the comment submitted to the NEPA Task Force consists of detailed examples of best practices and case studies. Because of the detailed nature of these comments, they do not lend themselves to a

brief summarization. This summary, therefore, is intended only to give a general discussion of the pervasive themes running through public comment. For detailed concerns, case studies, and examples of best practices, see the public concerns chapters.

Following this summary is a formal list of public concerns identified during the content analysis process, organized topically into six chapters: **Chapter 1, CEQ Review and Planning Processes**, includes comments on the CEQ review process and the general implementation of NEPA and other planning processes; while **Chapter 2, Technology, Information Management, and Information Security**; **Chapter 3, Federal and Intergovernmental Collaboration**; **Chapter 4, Programmatic Analysis and Tiering**; **Chapter 5, Adaptive Management, Monitoring, and Evaluation Plans**; and **Chapter 6, Categorical Exclusions** include comments addressed specifically to the corresponding topic area identified by the Task Force.

There is no chapter or section of the document devoted to topic F: Additional Areas for Consideration. Comments that specifically reference this topic range from suggestions regarding general NEPA and planning implementation to reiteration of concerns addressed under other topics. Thus it is impossible to categorize many responses to topic F into groupings which differ from responses to the other topics. All topics people address which do not logically fall under topics A through E are accounted for in Chapter 1.

Furthermore, while some respondents do specifically reference the above topics in their comments, many others do not. All responses are considered in the content analysis process, and every effort is made to identify all concerns and present them in a logical, readable format. Because the Task Force identified specific topic areas on which to receive input, this document is organized around those topics. All concerns which address a given topic are included within the same section, whether the respondent raising that concern specifically references that topic or not. In this way the document attempts to present the public concerns as a response to the topics identified by the Task Force, while at the same time presenting all related concerns raised by the public.

In the following chapters, each formal statement of concern is accompanied by one or more sample comments which provide respondents' specific perspectives and rationales regarding that concern. For each sample comment a letter number is provided, enabling the reader to track and review the original response, if necessary. This formal list is intended to capture the full range of concerns regarding this project; however, it is not intended to obviate the need for the Task Force to review the database report and original responses separately. Its primary purpose is to provide a topical review of voluminous comment in a format that aids in careful consideration and agency response.

General Overview of Public Comment

Public comment on the CEQ review of NEPA is far reaching, often highly detailed, and represents a wide range of values and perspectives regarding the role NEPA plays in public land management. Throughout all of this comment, one single, overarching theme stands out: that is, that NEPA is understood and respected as a statute intended to ensure both the adequate consideration of environmental effects in land use planning, and the adequate involvement of the public throughout the planning process. How people assess NEPA—the comments they make

regarding its adequacy, the changes they suggest, etc.—follows from how they judge its effectiveness in meeting those two purposes.

Respondents judge NEPA's effectiveness in meeting those purposes in terms of a number of factors, many of them associated with the five topic areas identified by the Task Force. However, fully one half of public comment does not address those topic areas; rather, it addresses more general considerations of NEPA implementation—in particular, NEPA analysis and documentation requirements, and the role and effects of litigation. A large percentage of comments are devoted specifically to these topics; and a large percentage of comments directed to other points are driven by concerns associated with these topics. Thus it is primarily in terms of factors related to analysis/documentation and litigation that people judge NEPA's effectiveness in meeting its intended purposes.

Many respondents believe that the general requirement to provide adequate analysis has been taken to an extreme, that documents have become unconscionably time-consuming and costly to produce, and that the resultant “analysis paralysis” forestalls appropriate management of public lands and ultimately leaves the public distrustful and disengaged. People believe there are basically two related causes for this situation. First, they believe that NEPA analysis requirements are so vague that they are open to considerable interpretation; and thus, whatever amount of analysis is provided remains an easy target for litigation by groups opposed to a proposed management plan. Second, people believe that because the requirements are so vague and open to interpretation, that agencies themselves are not sure of what is expected and have therefore allowed court decisions throughout the country to dictate the process incrementally. The result is that agencies are not sure how much analysis will be considered adequate by the courts, and so feel under constant pressure to produce more. In short, a vicious cycle has developed: vague analysis requirements lead to both litigation and agency uncertainty over how much is enough; litigation and agency uncertainty cause agencies to produce more analysis which—due again to vague analysis requirements and open interpretation—leads to more litigation, which leads to more analysis . . . and so on . . .

In response to this assessment of what has occurred since NEPA was originally enacted, many urge the Task Force to take control back from the courts—by providing clear and unambiguous guidance on the level of analysis required by NEPA; by clearly delineating the requirements for different NEPA documents, particularly environmental assessments (EAs) and environmental impact statements (EISs); and by working to reign in litigation through measures aimed either at restricting its reach or at mandating stiffer requirements for appellants.

This assessment also motivates many of the comments people offer regarding the topic areas identified by the Task Force, particularly adaptive management and categorical exclusions. Many respondents support the use of adaptive management on the grounds that it represents an inherent acknowledgement that perfect knowledge of effects is not possible in advance, and that it therefore allows needed management actions to proceed in the face of uncertainty. A number of respondents also support increased use of categorical exclusions on the grounds that that will reduce analysis demands and therefore streamline the regulatory process.

Many other respondents, however, assess NEPA differently in terms of analysis/documentation and litigation. According to these people, “analysis paralysis” is really a misnomer. Agencies are not required to produce unreasonable amounts of analysis, these respondents insist, they simply refuse to provide reasonable analysis the first time around. These respondents charge that

agencies often predetermine the outcome of the planning process in virtue of the alternatives they offer; that they often fail to consider other reasonable alternatives; and that the analysis they provide is often wholly inadequate to support the management plan they propose. They feel that the environmental effects of proposed actions are often inadequately considered, particularly the cumulative effects; that agencies rely on inadequate or outdated data; and that agency research is not held to the same rigorous standards as research is in other fields, particularly in terms of scientific reference and peer review. They feel, moreover, that agencies are sometimes so intent on following a predetermined course of action that they virtually ignore concerns submitted by the public, and that the whole public involvement process is sometimes no more than a show. In response to this assessment, these respondents feel, too, that public lands are often not managed appropriately and that the public is ultimately left distrustful and disengaged.

This assessment also underscores the comments offered in defense of litigation. According to a number of respondents, litigation only results when agencies do not comply with NEPA requirements. Some insist that it is only through litigation that concerned parties can get agencies to recognize their concerns and to actually give serious attention to the environmental effects of their proposed actions.

This assessment likewise motivates many of the comments people offer regarding the topic areas of adaptive management and categorical exclusions. Many respondents object to adaptive management on the grounds that it will in effect excuse agencies from having to carry out thorough analysis before implementing a management plan; and as such, there really won't be any point in engaging the public either. Many also fear that if agencies are free to employ categorical exclusions more widely, many projects will be judged to be environmentally benign without the benefit of any supporting analysis.

Thus respondents offer very different perspectives on NEPA analysis/documentation requirements and on the role and effects of litigation. Not all of the public comment on the CEQ review of NEPA, however, falls so neatly into these two positions. Many comments are offered with the primary intent of improving the consistency and effectiveness of NEPA implementation; streamlining its coordination with other regulations and planning processes; increasing the availability and usability of electronic information; promoting effective and meaningful collaboration; clarifying and coordinating the relation between programmatic analysis and tiering; and promoting the efficient and fair use of both adaptive management and categorical exclusions. But it is also the case that many of the comments offered in these contexts are clearly driven by a certain perception of what NEPA is intended to accomplish vis-à-vis public land management, and how analysis requirements relate to that purpose.

In general, those who believe that analysis requirements have become unnecessarily burdensome suggest ways to streamline NEPA implementation with respect to nearly every topic, and such streamlining usually entails curbing the need to continually engage in more analysis. Those who believe that analysis requirements are only deemed to be burdensome by those unwilling to carefully analyze the effects at the outset assert, with respect to nearly every topic, that adequate safeguards must be maintained to ensure that environmental effects are adequately considered.

As noted above, public comment on the CEQ review of NEPA is far reaching and represents a wide range of values and perspectives regarding the role NEPA plays in public land management. Although there are some respondents so frustrated with NEPA processes that they suggest throwing out the statute altogether, and others so fearful that environmental protection

may be compromised that they protest any changes whatsoever, most respondents do not fall into either of those extremes. Most people do appear to fall into the two groups described above with respect to analysis requirements, but, for the most part, the two groups do not represent polar opposites so much as a tension between the desire for timely and efficient planning and the desire for fair and thorough consideration of effects. What most respondents ask for, ultimately, is a balance that incorporates the most important considerations of both.

Overview of Comment on Specific Topics

Following is a summary of public comment on specific topics. These topics include the CEQ review and planning processes; technology, information management, and information security; federal and intergovernmental collaboration; programmatic analysis and tiering; adaptive management, monitoring and evaluation plans; and categorical exclusions.

CEQ Review and Planning Processes

CEQ Review of the NEPA Process

Many respondents comment about the process the Task Force is undertaking to review NEPA practices. These comments cover a full spectrum of concerns, ranging from adamant opposition to aggressive support for the review. On the one hand, some feel that resources should not be spent for reviewing NEPA and fear that the review would lead to weakened environmental protection. On the other hand, some assert that the Task Force should pursue changes to NEPA more aggressively. A few respondents comment on the scope of the review and provide suggestions regarding the issues the Task Force should consider in its review, including the history of NEPA and previous congressional acts. Along the same lines, some writers suggest that the Task Force should coordinate its review with other agencies' efforts to streamline NEPA processes.

Some address the effectiveness of the Task Force itself. These writers generally feel that the Task Force should consist of many diverse members, including private, state, and tribal participants. Others assert that the success of the Task Force hinges on its members being free from political and special interest pressures. Conversely, a few writers believe that a decentralized approach to improving NEPA would be more effective than the Task Force efforts.

Public involvement in the CEQ review process is a topic of concern to a number of writers. Respondents request assurance that the Task Force will involve all affected parties, provide adequate notification, and consider all comment equally. The practice of submitting public comment through the CEQ website prompted a few writers to suggest improvements, such as making the website more user-friendly. Some of these writers also request that the comment period be extended.

General Implementation of NEPA and Other Planning Processes

Respondents differ in their views regarding the general implementation and purpose of NEPA. In general, there are those who support the retention of NEPA, those who support the abolishment of NEPA, and those who provide a full spectrum of suggestions to revise NEPA. A number of writers assert that there is no need to change or streamline NEPA because the current regulations are adequate and streamlining the process would defeat the original purpose and intent. Similar

to this concern is the request that any changes made should only strengthen environmental protection practices and increase informed decisionmaking and public participation. Some feel that the purpose of the NEPA process should be about making quality decisions rather than producing quality paperwork. Other writers further suggest that complaints about the NEPA process are misdirected; the real problem lies in the bureaucratic culture of those implementing the process.

A number of respondents support NEPA in principle but feel that improvements are needed in the process. Numerous writers express concern that the purpose of the NEPA process has changed. These people argue that NEPA is meant to be procedural and not substantive, and that decision makers are conducting the process merely to avoid litigation. Some suggest that NEPA should be changed to simplify and clarify the process and to allow responsible actions. Others express greater discontent with NEPA and suggest that it has become one of the most onerous federal burdens. Some request that NEPA simply be abolished.

The implementation and application of NEPA is an issue of concern for a great number of respondents. Many believe that CEQ should encourage effective implementation of NEPA. These writers assert that because of the complexity of implementation, project opponents can easily delay or halt the process. Others suggest NEPA planning should be conducted early in the project so that agencies may coordinate efforts rather than duplicate them. Some writers assert that the key to improving NEPA is to clarify underlying guidance and revise the CEQ regulations. These writers request that the CEQ regulations be updated to reflect recent environmental legislation and case law.

Regarding the application of NEPA, respondents submit varied suggestions. Many of these writers believe that agencies should concentrate their efforts only on those major federal actions truly having a significant effect on the human environment, such as forest plans and multiple use programs. On the other hand, some writers request that certain specific actions not be exempted from NEPA review, such as fire fighting and fuel reductions projects. Additionally, a number of respondents provide specific examples of effective NEPA implementation as well as examples of NEPA abuses. On the whole, respondents assert that agencies should be required to comply with CEQ regulations and suggest that consistent application of NEPA is an important issue. Some suggest that to ensure consistent application, the Task Force should establish objective criteria, eliminate interpretive redundancy, and establish guidelines for all agencies to follow.

A few writers also express concern regarding funding for NEPA processes and suggest that adequate resources be allocated to conduct NEPA planning.

NEPA Analysis

The topic of NEPA analysis requirements elicits much varied comment. In general, respondents who comment on NEPA analysis fall roughly into two groups: those who encourage adequate analysis, and those who express concern regarding excessive analysis.

Respondents who encourage adequate analysis generally express concern that environmental protection is more important than the time, cost, and effort required to conduct NEPA analyses. Some specifically assert that agencies should not allow complex paperwork to become a disincentive to conduct analytical review on every project. Others argue that delays in the NEPA process do not stem from analysis requirements, but from lack of funding, local support, and project complexity. Along the same lines, some feel that any delays that are caused by required

environmental analysis are justified. Several writers oppose setting time limits for environmental review “because they would weaken the NEPA process and do little to actually improve NEPA implementation.” Those who request adequate NEPA analysis also request adequate cumulative effects analysis because “consideration of cumulative effects is essential for evaluating and modifying alternatives to avoid adverse environmental impacts and developing appropriate mitigation and monitoring plans.”

On the other hand, a number of respondents express concern regarding perceived excessive analysis requirements. Many of these writers mention the concept of “analysis paralysis,” suggesting that agencies are becoming embroiled in conducting studies and analysis and attempting to consider an unnecessary level of information. Some suggest that the fear of appeals drives agencies to conduct too much analysis. Others are troubled by the time and expense of analysis, especially when they feel the studies are unnecessary. In response, a few writers request that the Task Force set time limits for NEPA analysis, suggesting that “one of the greatest complaints of the NEPA process is the interminable delay for decision-making.” Some suggest that the environmental community should be required to show significant effects from the proposed actions before a NEPA analysis is conducted. Others suggest eliminating the requirement for cumulative effects analysis because “the argument that all cumulative impacts have not been considered has been taken to ridiculous extremes.”

However, there are some writers who do not fall neatly into either of the former groups and who merely provide suggestions for improving NEPA analysis requirements. Those who comment on the application of analysis generally provide suggestions for streamlining and simplifying its use. According to one state agency, the Task Force should eliminate the study of small scale projects. Others suggest that only effects pertinent to the action should be included in the analysis; that agencies should only provide concise information on the affected areas; and that agencies should limit analysis to issues within their jurisdiction. In another vein, some address the scope of analysis. Some feel that the Task Force should require adequate scoping. Others suggest that agencies should dismiss all issues outside the scope of analysis. Some say that NEPA should “include a scale for the use of the word ‘significance,’ since it is often used by federal agencies.”

Several respondents also comment specifically on cumulative effects analysis. Topics of concern include the application, level, and scope of cumulative effects analysis, and the analysis of connected or related actions. For example, according to one respondent, “In some situations, federal agencies will describe and evaluate a portion of a proposed action without considering “connected” or “related” actions in the same document as required by the CEQ NEPA regulations.”

Several respondents express concern regarding the quality of research and the use of best available science in NEPA analysis. In general, these writers ask the Task Force to ensure that information is of high quality and that the analysis is sufficient to support decisions. As one respondent argues, “I have not experienced real scientific review of the decisions being proposed by federal agencies. There has been a real lack of honest science that is not biased.” Some writers recommend the use of high quality agency research, and suggest that this be accomplished by encouraging the use of reliable information and requiring the use of rigorous scientific methods. Others further suggest that better criteria should be established for the use of best available science. According to a few writers, agencies should subject information to the guidelines established by the Office of Management and Budget. Some respondents express concern regarding the use of data and suggest that data should be current. Some are also under

the perception that agencies manipulate data to achieve a predetermined outcome and ask that this issue be addressed. Along the same lines, a few respondents assert that accountability should be required for document information, both on the part of the persons submitting information and the agency making the decisions.

Another aspect of NEPA analysis that respondents comment on is the determination of need and the development and use of alternatives. There is the perception among some that “the greatest sham is the determination of need. There have been many agenda programs foisted upon us unsuspecting naturalist citizens creating the impression that the need is overwhelming.” Others request that agencies focus on issue identification and achieving results, rather than merely following procedures. Regarding the development of alternatives, some writers identify specific factors that should be considered and others encourage stakeholders to participate in the process. There is the perception among a few respondents that “current NEPA regs give significant discretion to lead agencies in designing the alternatives to be studied, and thereby allow agencies to pre-determine an outcome based on the alternatives they choose.” In a similar vein, some assert that the present process of analyzing alternatives results in the polarization of public opinion and ultimately compromises the decisionmaking process. A number of writers comment about the range of alternatives and the use of the no action alternative. In general, these respondents request that agencies consider an adequate range of reasonable alternatives, but also advise limiting the number of alternatives and oppose analyzing every conceivable alternative. Some writers suggest that “the No Action Alternative [must] be raised as the standard against which all other alternatives to the proposed action are weighed,” while others suggest that the no action alternative should be defined as the status quo.

NEPA Documentation

A great number of writers address the preparation and use of NEPA documents. In general, these writers express concern regarding the appropriate depth and purpose of NEPA documents. Some request that the Task Force address the increasing emphasis on documentation because “the documentation for environmental impact statements and environmental analysis has gone from a few pages to a few hundred pages.” In a similar vein, respondents provide suggestions as to what level of analysis and information should be included. Some comments emphasize the quality of documents, suggesting that the quality of documents reflects the degree of NEPA compliance. Conversely, some focus on the quantity of NEPA analyses to determine the effectiveness of the NEPA process. Some of these writers believe that agencies should quantify the number of EAs, FONSIIs, and EISs created annually, the number of EISs challenged in court, and the number that are upheld to see how well NEPA is currently working. The topic of new information and supplemental documentation is also an issue of concern to some writers. They express concern that “the continuing duty to supplement environmental documents for ‘new information’ both during and after the original NEPA process slows the process and disrupts implementation of approved actions.” As a result, some suggest that the definition of new information should be narrowed, while others request a redefinition of “new information” that necessitates a supplemental EIS.

Regarding the application of NEPA documents, respondents’ opinions vary. Some feel that environmental assessments (EAs) and environmental impact statements (EISs) should only be used for large-scale projects because of the required depth of analysis to prepare the document. Others believe that NEPA documents ought to address resources, public concerns, desired future

conditions, and management strategies. Many comments about NEPA documents address the relation between and appropriate application of different NEPA documents, specifically between EAs and EISs, and EAs and Findings of No Significant Impact (FONSI). Some express concern that agencies are requiring EISs for projects which previously only required EAs, claiming that “the federal government uses the EIS process to inoculate itself from legal challenges.” On the other hand, some assert that EAs should not be used when EISs are clearly required. As one individual states, “I often see voluminous environmental assessments, when environmental impact statements are called for in the CEQ regulations and guidelines.” Others request clarification regarding the different procedural and analysis requirements for EAs and EISs. Finally, some suggest that the Task Force should define the required content of a FONSI and require it to be incorporated into the supporting EA.

Several comments focus on specific types of NEPA documents. In general, comments on EAs are divided between those who support simplification of EA requirements and those support expanding the scope of EAs. However, a number of writers simply request guidance from the Task Force. For example, one federal agency maintains, “Considering the increased use of EAs by . . . Federal agencies, additional CEQ guidance on appropriate EA analyses and documentation and the role and extent of public involvement in EA preparation would be valuable.” Regarding the preparation of EISs, some feel that agencies should set boundaries as to what needs to be evaluated in an EIS while others express concern regarding the need to address agency abuse of the EIS requirement. According to one individual, “The process of performing an EIS has become commonplace and instigated by rabid preservationists for even such non-actions as small gold suction dredges in the western states.”

Lastly, a number of writers address document language and formatting. According to one recreational organization, “It would be extremely useful to establish protocols or standardized procedures for presenting certain types of technical information.” Others suggest the usefulness of separating the “affected environment” and “environmental consequences” sections in NEPA documents.

Staffing, Training, and Decisionmaking Authority

Some writers ask the Task Force to address staffing and training issues within agencies. Specifically, some suggest that the Task Force should encourage agencies to streamline internal procedures and manage personnel effectively “to avoid unnecessary delays.” Others believe that the NEPA process is dependent on agencies’ wise use and recruitment of qualified scientists and managers. Along the same lines, some suggest that agencies should give authority and responsibility to people for decisionmaking as related to their field of expertise. Other respondents encourage NEPA training for all agency personnel because a “basic NEPA understanding is needed by every employee.”

On the other hand, comments are divided regarding the use of private contractors. Some feel that the Task Force should encourage the use of private contractors. These respondents comment that “the time commitment of staff and the cost to do an EIS, and even some EAs, is so great that agencies are being drained of their resources and are unable to accomplish their basic jobs.” Others oppose the use of private contractors because “the current use of consultants raises questions about potential conflicts of interest.” In another vein, some comment about the appropriate role of ID teams. A few writers suggest that the Task Force should require adequate

leadership training for ID teams and others stress the need for agreement between ID team members regarding project goals and objectives.

Decisionmaking authority is also a topic of concern to several respondents. These writers comment about who should make decisions, the responsibilities of decision makers, as well as the role of others in the decisionmaking process. First, some encourage the CEQ and agencies to regain control over defining the requirements of NEPA, rather than allowing the courts control. Others encourage the participation of states and local officials. Some comment about the role of agencies. According to one respondent, "It is essential for each federal land management agency to develop an internal accountability process for responsible management and for ensuring designated program tasks are accomplished in an efficient, cost-effective and timely manner."

Some comment about the role of special interest groups. In general, these respondents feel that efforts should be made to minimize the influence of interest groups over the decisionmaking process. One respondent insists that agencies should not "let special interest or single-issue organizations dictate poor policy in the face of common sense." Others advise holding environmentalists accountable for their activities, and some request larger penalties for corporations that violate environmental regulations.

Some believe that the Task Force should grant decisionmaking authority to unbiased, non-agency third parties or to scientists and conservationists. Others assert that "citizens, or groups of citizens, that act to try to protect the environment should never be considered as a special interest group or as a 'competing interest.'"

Public Involvement

Public involvement is a topic of concern to many respondents. Most of those who comment about public involvement generally support the maintenance of adequate public input opportunities and oppose any weakening of public involvement requirements. According to one respondent, "NEPA is more effective where it is used to invite and engage the public in a process where they are involved in the planning of their government's actions. The people are in the best position to tell their government what the effects will be on their environment." Other suggestions to improve public involvement include encouraging agencies to be responsive to the public and to formalize a plan to avoid hindrances to effective public participation.

Some respondents focus comments on the role of agency outreach efforts. For example, one individual asserts that "improvements could be made in notifying citizens, locally, regionally, and nationally, of proposed projects so that comments could be gathered from those most interested/affected." Others suggest that the Task Force should establish criteria to determine which local governments to contact and how contact should be established. Some express concern that the public should be provided with convenient access to information as well as adequate contact information regarding the NEPA action. Comments regarding public meetings are divided. While some suggest that meetings are appropriate for agency personnel to explain the proposed action and accept comment, others feel that meetings are not effective venues for public involvement. A number of comments also discuss the need for adequate comment periods.

A number of respondents also express concern regarding agency use of public comment. Some writers assert that agencies should be required to accept comments, address all comments, and consider public opinion as seriously as agency opinion. Comment is divided as to how agencies should actually analyze public input. Some believe that agencies should give greater weight to

comments from residents and local officials, others suggest that last minute submissions should receive less consideration than those offered early. Conversely, some feel that agencies should respect comments from all citizens. A few writers assert that the NEPA process is not a vote and that agencies should merely consider the content of comments. Similarly, one individual points out that “it may be worthwhile to attempt to separate what constitutes substantive comment from statements of preference or personal values, and allow them to be analyzed separately.” On the other hand, some state that “we need to have more voter consensus pertinent with any and all regulatory measures prior to implementation.”

Finally, some writers suggest that agencies should cooperate with all interested parties. One multiple use organization states, “We do support a revision of NEPA in order to foster improved coordination between government agencies and the public.” Some emphasize collaboration between environmental and corporate interest groups. And finally, others suggest that the Task Force should require agencies to implement a dispute resolution process.

Relationship of NEPA to Other Planning Processes and Policies

A great number of respondents discuss the relationship of NEPA processes to other planning processes and policies. Many of these comments focus on licensing and permitting processes. In general, writers express a need to streamline and simplify permitting processes. Some feel that the Task Force should encourage more timely permitting processes. On the other hand, some point out that the “delay” in permitting processes is actually beneficial for adequately analyzing effects and that what is needed is an increase in funding.

Several writers address specific permitting processes, such as those for grazing, oil, gas, and mineral development, and utilities. Regarding grazing, some suggest that agencies should conduct NEPA analysis at the time of the initial issuance of the permit, not at the time of reissuance. Others feel that the process should be simplified, suggesting that grazing permits should not require separate NEPA analysis, and that the NEPA process should not be imposed on permit renewals for unchanged historic use. Others comment about oil, gas, and mineral development. Many of these writers indicate the importance of public involvement in the permitting process for mining and drilling. For example, one respondent submits, “We ask that to ensure more meaningful public involvement prior to the irretrievable commitment of federal resources by selling an oil and gas lease parcel, CEQ provide Bureau of Land Management recommendations in this area.” Comments regarding utilities permitting processes are varied. Some suggest that applicants for electricity permits be allowed to request the designation of a lead federal agency, while others believe that the Task Force should undertake efforts to reduce the time and cost involved in licensing hydroelectric facilities.

Respondents also express concern regarding transportation planning and winter recreation planning. Several writers recommend that the Department of Transportation improve its planning processes. According to one respondent, “Transportation planning which considers communities and protected resources such as public parks, wildlife habitat, historic sites and scenic areas will produce better projects that are less likely to incur opposition and delay.” Others assert the need for better integration of transportation planning and NEPA planning. At the same time, some lament the point “that environmental process delays slow down the delivery of badly needed transportation improvement projects.” Others protest the possibility that local residents “may attempt to use the environmental review process to delay the issuance of SEA’s environmental documentation and the conclusion of the Board’s decisionmaking processes” for rail line

construction projects. Lastly, some respondents advise agencies not to impose more requirements on the ski industry than on other land users.

Relation to Laws, Regulations, and Policies

The topic of the relationship of NEPA to other laws, regulations, and policies garners several, varied responses. A number of respondents specifically mention certain laws or acts. Some suggest revision of an act or law, some request compliance between NEPA and a specific law, and some submit more specific suggestions, such as the need to address redundancies among different legal requirements. Respondents discuss a number of acts—e.g. Antiquities, Appeals Reform, Clean Air, Data Quality, Endangered Species, Equal Access to Justice, Farmland Protection, Federal Advisory Committee, and Freedom of Information—as well as the General Mining Law and other laws.

A significant topic of concern is the appeals process. Some writers express concern regarding the susceptibility of NEPA decisions to litigation and appeals. According to one respondent, “NEPA processes need to be better and more clearly defined in order to withstand judicial attack.” Others suggest that judicious rulemaking will reduce NEPA procedural burdens and litigation vulnerability. There is the perception among some writers that environmental groups use appeals to tie up the process and to that, as a result, the natural resource base is being crippled. A number of others request that the Task Force revise the appeals process to restrict or discourage litigation. For example, one individual asserts that “it is time the law was amended to restrict the use of lawsuits by overzealous, but well meaning, individuals and put common sense into land management by trained professionals instead of land management by judicial decree through unqualified lawyers and less qualified judges.” Others feel that the Task Force should address the cost of appeals and not allow special interest groups to file lawsuits that are ultimately paid for by the American public. Some also comment about the criteria to claim standing in an appeal process. A few suggest that economic interests should have the same appeal standing as that given to environmental interests. Further, some feel that an interested party should only include those who are economically affected by the decision.

Several respondents discuss regulatory requirements. Some request agencies address the requirement to “coordinate with a myriad of federal laws and regulations in their environmental documents.” Others suggest that agencies implement practices that adequately respond to state and local agency regulatory and proprietary concerns on new project proposals. Finally, another topic of concern is that of integrating regulations relating to American Indian interests with NEPA processes. For example, one respondent argues, “We have nothing against sacred sites, but doubt whether the preservation of religious practices is a proper object of NEPA.” Others express concern regarding the required costs of conducting NEPA and the resulting burden on Indian reservations.

Environmental Considerations of Planning

Many respondents feel that agencies, through the guidance of the Task Force, should be required to consider the protection of the environment in their activities. Some single out specific agencies that are in need of substantive environmental progress while others assert that all agencies should incorporate ecological effects of actions (and inaction) into planning and decisionmaking processes.

Several writers focus comments on air quality. They feel that the Task Force should address the adequacy of air quality analysis in NEPA documents and should amend NEPA to protect air quality. The reduction of mobile emissions is a particular concern, as well as compliance with the Clean Air Act.

Respondents also express concern about other environmental issues, including water quality, agricultural land, wildlife, vegetation, forest health management, and fire management. Some writers suggest that the Task Force should strengthen water quality regulations and others petition for the preservation of rivers, particularly the Mattaponi River. Some also request that marine environments be included in NEPA requirements. Along the same lines, some respondents request that the Task Force encourage the use of professionals to identify important habitat areas and encourage the preservation of old growth forests. Several respondents suggest that the Task Force should address the effect of NEPA on forest health treatments and fire plan projects. A great number of writers mention the need to improve the process for determining emergency circumstances and request the establishment of a mechanism to clarify the corresponding accelerated environmental review.

Natural resource development is a topic on which writers express varied concerns. While some encourage land development to facilitate access to natural resources, others caution the Task Force to consider the consequences of allowing developers free reign on public land. Several respondents focus their comments on specific activities, such as timber harvest and mining. These comments are also polarized. Some encourage more emphasis on sustainable timber management while others believe that NEPA should be used to prohibit timber harvest altogether. A number of writers assert the importance of NEPA for mining decisions, especially for permit decisions and effects analyses. Others argue that agencies inappropriately use NEPA to delay or halt mining operations.

Social and Economic Considerations of Planning

The topic of social and economic considerations encompasses various issues. Some believe that NEPA should apply to all elements of the environment, not just elements that directly relate to humans. As one individual states, the “Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” Others assert that NEPA should require an analysis of social issues, including heritage, tradition, and cultural resources, as well as an adequate economic analysis. Respondents who comment about economic issues express concern that agencies should incorporate ecosystem services into economic analyses. Others request that agencies justify the decision to reject an alternative on economic grounds.

Several people comment about the effect of NEPA on access to public lands. According to one individual, “The NEPA process, as it stands, has been used to lock up lands which the public owns and has a right to use.” Others argue that reduced access is a result of lengthy NEPA planning processes.

Finally, many express concern regarding the effects of the NEPA process on local economies, businesses, and individuals. One respondent claims that “NEPA decisions by both the Forest Service and to a lesser extent the BLM, have greatly affected my employment and way of life. In this area, sawmills have closed, grazing allotments gone unfilled, and outfitter-guide permits lost.” Others point out the negative effects of NEPA on mining operations, farmers, and ranchers.

There is the perception among some writers that the NEPA process is sometimes used inappropriately by minority interests. These respondents assert that the Task Force should discourage laws and regulations that allow special interests to put jobs and companies at risk.

Technology, Information Management, and Information Security

General Use of Technology

Many respondents comment about technology and information management. Several writers encourage the use of current technologies in planning processes. According to one individual, “The latest technologies provide tremendous abilities in efficiency, quality and quantity of data collection and especially analysis.” Others propose that the Task Force create a technology framework to address specific areas, such as project administration, geographic information system management, and comment submission. Conversely, some respondents request that agencies focus on the result of NEPA analysis rather than the technology used to get there. In addition to these concerns, a number of respondents submit a wide range of sources of existing data that are used to prepare or comment on NEPA analyses. These sources include electronic sources (such as hypertext documents), media sources (such as print and satellite media), documents and reports (such as published scientific literature), surveys, inventories, maps, models, public offices (such as the Forest Service library), agency specialists, and organizations (such as environmental groups).

Other respondents center comments on the criteria for gathering and using information. Some suggest that the Task Force should encourage on-line access to information. According to one respondent, “Federal agency implementation of NEPA would be enhanced with more consistent electronic capture and availability, in digital format, of federal agency environmental review documents and decisions.” While some support the use of computer modeling, others caution against overreliance on computer modeling technology because “they are subject to error.” In a similar vein, some suggest that technological data assessment should be balanced with the need to make decisions in a timely manner.

Many writers who comment on information technology express concern over perceived barriers to its use. Suggested barriers include lack of access to data or technology, unusable information technology, inadequate training, inadequate funding, and lack of data quality and accuracy.

Several respondents suggest factors they believe should be considered in assessing the quality of information, and provide suggestions for improving the quality. Suggested factors to consider in assessing information quality include the quality and accuracy of analysis, the methods and standards used in collecting and evaluating data, objectivity, timeliness, and susceptibility to litigation. In order to improve the quality of information, some suggest that the Task Force should include only approved information in NEPA analyses. Others suggest the creation of criteria for determining appropriate levels of analysis. One respondent suggests that “linking reference materials to NEPA documents . . . could enable the public and other agencies to obtain supporting information on which conclusions and decision-making are based.”

Internal Databases and Information Tools

Some respondents feel that agencies should maintain databases of information collected for environmental documents. Additionally, other respondents report what internal databases are currently used. Some of these databases include both standing and project-specific databases, and more specific databases such as water quality information databases and historical air traffic count databases. Some express support for the standardization of data collection and storage formats. According to one individual, "It would be exceedingly helpful if some level of standardization to both information resources and standard analytical frameworks so that one could begin to understand how land management decisions are made." Others advise the Task Force to consider the difficulties of standardizing data and information. As one respondent remarks, "Would establishing standardization be worth the effort?" In general, those who comment on the development of databases support efforts to standardize them and to share information so that decisionmaking processes are consistent and information is more available.

Along the same lines, several writers request that the Task Force consider what information management and retrieval tools are used. These respondents mention specific tools, such as Microsoft software and web-based systems. Others request the creation of better information management and retrieval tools. One respondent suggests that "a centralized, web-based system of information that is easily accessible to project analysis teams could help increase efficiency, reduce redundancy, and address the education problem." Other suggested improvements include an electronic reference library and a standardized dialogue. Some express specific concerns regarding information management tools, such as the inadequacy and inconsistency of agencies' notification processes.

Communication Technology

A number of respondents comment about public access to information and its relation to communication technology. Some suggest that the Task Force should encourage agencies to create standardized websites for posting NEPA information. Other respondents request that information be made available early in the process and that current technology should be used to communicate this information. Many who comment on communication technology express preference regarding methods for conveying and receiving information. Some prefer electronic formats, such as websites, e-mail, and CD-Rom. Some request that electronic documents be posted in a standardized format, while others point out that electronic formats save the expense of hard copy printing. On the other hand, several writers express preference for hard copies of documents as well as notification through U.S. Mail. Other preferred methods include media (such as television and newspapers), public libraries and agency offices, and public meetings. A few writers request that a variety of methods for communication be provided. Conversely, some also suggest methods that are not effective, such as public meetings, newspapers, and email.

The use of the internet for public involvement purposes is a topic of interest to several respondents. Some feel that agencies should provide websites for public comment and others believe that soliciting comment through e-mail notification is beneficial to the NEPA process. As one individual expresses, "I think that implementation of the electronic form of comment submittal, i.e. direct submittal after reading online a particular section of a (preliminary) EIS would acquire a new set of opinions, beyond that from those comfortable submitting in a more formal written document." On the other hand, some express caution regarding the use of internet resources for public comment. Some suggest that the Task Force develop standards for

electronically submitted documents; while others insist that web-based mediums not be the only method for public input. Others assert, moreover, that agencies should not use web-based mediums to analyze and respond to public comment. One respondent asserts that “it is objectionable to use computer software in order to review, categorize using key words, and then respond to public comments on NEPA documents. Knowledgeable agency personnel, not a machine, should review the actual comments and decide on the agency’s response.”

Balancing Public Involvement and Information Security

In general, comments regarding the appropriate balance between public involvement and information security are polarized. Some respondents stress greater importance of information security than public involvement and request that the Task Force work to minimize information security risks. According to one federal agency, “Given the post 9/11 environment, extra caution must be taken to ensure adequate policy and security review is accomplished on all information released to the public.” Conversely, others express concern that the public’s access to information not be limited by security measures. As one individual expresses, “NEPA is allegedly a public process; why are we concerned about information security?”

Several respondents provide suggestions as to how agencies should treat sensitive information. Some comments specifically identify what types of information should not be made public. For example, “Information that could potentially endanger a project or personnel should not be released.” Other respondents suggest that the Task Force should ensure the security of existing computer data and modeling. One respondent suggests that “information can be posted electronically without infringing upon document integrity (i.e., alteration) through the use of appropriate word-processing software.”

Federal and Intergovernmental Collaboration

General Federal and Intergovernmental Collaborative Relationships

Many respondents express concerns regarding federal and intergovernmental collaborative relationships. In general, writers encourage collaboration among decisionmaking entities. Some request stronger roles for state and local governments. As one county commissioner states, “The role of local governments should be recognized and encouraged/allowed to participate in the NEPA process from the earliest stages.” Some respondents emphasize the importance of state environmental reviews and suggest that states be given greater environmental decisionmaking authority. Others assert that the Task Force should recognize and encourage American Indian tribal participation.

Another topic of concern is the coordination of efforts between multiple agencies. Some suggest that agencies should collaborate on NEPA documents to avoid duplication of effort. One state agency maintains that “all study decisions should be expertise-based and rendered by the agency with recognized knowledge and legal authority.” Others suggest that the Task Force should improve collaboration by addressing and monitoring differences among agencies. In a different vein, some respondents express concern that interagency cooperation should not impede public involvement. According to one individual, “Interagency cooperation should work in an efficient manner that recognizes the expertise of each governmental entity. However, don’t shut out the public.”

Some respondents request that the Task Force coordinate and consolidate NEPA delegated review procedures. Others focus comments on cooperating agency relationships. Several writers urge agencies to extend cooperating agency status to state, local, and tribal governments, explaining that these entities best understand local issues and have large stakes in federal activities in their jurisdiction.

Respondents also comment about lead agencies and joint-lead relationships. Some believe that lead agencies should be given more decisionmaking authority; others ask that they be required to follow all pertinent regulations, policies, and directives. Some also recommend greater use of joint-lead agency relationships. According to one respondent, “In addition to effective cooperating agency relationships, greater use of joint-lead agency relationships could increase NEPA efficiency.” Some suggest that the Task Force should recognize one lead agency as the single lead agency for decisionmaking. On the other hand, a few respondents believe that one lead agency should not be recognized as the single lead agency for decisionmaking. Others express concern that lead agencies are unable to complete the NEPA process. In a similar vein, some feel that the joint-lead process is not employed fairly. Regarding joint-lead relationships, one individual remarks, “The agencies come in and determine who will agree with them, they then exclude all of us that may not give what they want to hear.”

Characteristics of Effective Collaborative Relationships

Many who comment about intergovernmental collaboration provide suggestions as to specific characteristics of effective collaborative relationships. These suggestions cover a full range of topics and are supported by various rationales. In general, respondents believe that effective collaborative relationships involve a sharing of goals and objectives, teamwork and cooperation, compliance with agency rules, clearly defined roles, effective and open communication, adequate public involvement, adequate funding, and shared trust. One individual asserts, “Both agencies must see an advantage to the relationship either through less work overall, better mission accomplishment, improved relations.” Others argue that “to be effective, collaborating NEPA partners need to have the necessary resources and staff capabilities to engage in the type of intensive negotiations often required to develop the procedural and substantive agreements associated with a joint interagency effort.” Some writers simply provide detailed examples of effective collaborative relationships.

Barriers to Effective Collaborative Relationships

A number of writers express concern regarding perceived barriers to effective collaborative relationships. “The greatest barrier and challenge to entering into an effective collaborative agreement among co-lead or participating agencies,” suggests one city agency, “is that they often have conflicting (and single-purpose) mandates.” Other barriers include inadequate commitment to collaborative processes, failure to cooperate, interagency conflict, single-agency dominance, inadequate participation, lack of guidance, differences in policies and interpretation, communication barriers, inadequate public involvement, documentation demands, lack of trust, and lack of funding. Some point out that “one potential barrier to joint state and federal processes involves jurisdictional issues where more than one party may have overlapping responsibilities for the same project.” Others simply provide detailed examples of ineffective collaborative relationships.

In order to build effective collaborative relationships, a number of respondents suggest emphasizing training in certain areas. These writers recommend that the Task Force encourage training in team building and cooperation, leadership and roles, the importance of public involvement, and other areas such as laws and scientific methodology.

Programmatic Analysis and Tiering

General Programmatic Analysis and Tiering

Of the respondents who comment on programmatic analysis and tiering, many assert that the Task Force should continue to require NEPA analysis at both programmatic and project levels. According to one individual, “there is no way to get around it, you must continue to require NEPA analysis at both the programmatic and project levels.” In general, respondents believe that guidance is needed regarding the appropriate use of programmatic analysis and tiering. Many of these respondents provide various suggestions as to how the Task Force should define and implement programmatic analysis and tiering.

Programmatic Analysis

Some writers submit comment specific to programmatic analysis. Several of these writers express concern regarding the appropriate use of programmatic NEPA analysis, including programmatic EISs and EAs. According to one respondent, “Guidance is needed on the content of program impact statements: what issues they should cover, and how they should be handled. There is very little case law on this topic, so that guidance from CEQ on program impact statement content is much needed.” Conversely, a few respondents suggest that “programmatic EISs do not result in approval of on-the-ground actions without a second environmental analysis” and therefore, “programmatic EISs could be eliminated, or merged with the project-level EIS that always follows.” For the most part, however, respondents encourage the use of programmatic analysis. Some suggest that the programmatic EIS should be the foundation for all decisions made within the program and others recommend the use of a programmatic checklist.

Many of those who comment on programmatic analysis recommend specific issues they feel are best addressed through a programmatic level review. These suggested issues pertain to general planning objectives, broadly defined actions, broadly applied actions, land allocations, general land management, natural resource management, and resource and commodity development. Others suggest that certain activities should not be addressed by programmatic analysis, including site specific issues, single issue management, and forest plans.

Tiering

A number of respondents specifically discuss tiering. Many of these writers believe that the Task Force should encourage more efficient use of tiering. For example, one respondent suggests that “redundancy is a problem in the NEPA process . . . from the standpoint of not applying ‘tiering’ enough.” Others assert that successful tiering is contingent upon timely development and implementation. There is the perception among some writers that tiered analysis often uses the programmatic analysis as a stamp of approval for projects which actually merit further analysis. These writers express caution against using tiered analysis “unless the appropriate analysis has taken place at all levels.”

A few writers provide suggestions as to what issues are best addressed in tiering. These suggestions include new issues, projects of similar type, and transportation system analysis.

Duplication and Barriers in Programmatic Analysis

Several respondents discuss various methods to avoid duplication in programmatic and tiered analysis. Many of these methods involve close coordination between programmatic and tiered analyses. One respondent recommends that “the EA for any project subject to a programmatic NEPA document not be a stand-alone document or repeat any analysis from the programmatic NEPA document.” Other respondents suggest that to reduce duplication, the programmatic document should be considered timely for a significant period of time and that subsequent tiered analysis should reference the EIS.

A number of comments regarding programmatic analysis concentrate on specific examples. Some respondents mention examples of analysis used to develop, maintain, and strengthen environmental management systems. These writers stress that features of effective environmental management systems include baseline inventory, analysis of trends, and continual avoidance or mitigation of adverse effects. Other respondents mention examples of existing environmental management systems facilitating and strengthening NEPA analysis.

Finally, some writers identify barriers to the effective use of programmatic analysis. One respondent claims, “Unfortunately, incomplete, inadequate, or inexistent cumulative effects analyses are all too common in the NEPA documents we review.” Others protest that the deferral of significant effects analysis until late in the process poses an obstacle to effective programmatic analysis. A few writers assert that certain legal processes and regulations, such as the Endangered Species Act Section Seven requirements, also prove to be impediments to programmatic processes.

Adaptive Management, Monitoring, and Evaluation Plans

Integration and Application of Adaptive Management

In general, respondents’ views on adaptive management are divided. Some assert that the Task Force should encourage agencies to use adaptive management as part of NEPA. These writers feel that by doing so, agencies will be enabled to address risks, facilitate management when uncertainty exists, and allow actions to proceed while gathering new information. As one respondent points out, adaptive management is “not a matter of consciously ‘considering factors.’ Adaptive management should occur at all times.” Conversely, other respondents oppose the use of adaptive management as part of NEPA. These writers believe that adaptive management is unnecessary and is in conflict with NEPA principles, that the NEPA process should not be continuous, and that CEQ regulations already provide methods for dealing with uncertain outcomes. According to one respondent, “The adaptive environmental management approach would violate NEPA’s mandate to identify environmental impacts and effects.”

Some feel that the Task Force should establish a formal process to evaluate the potential effectiveness of adaptive management programs before subjecting a program to analysis through an EIS. Other respondents express concern that adaptive management should not be used as a tool for agencies to fulfill their agendas. Some protest that “adaptive management may be used by agencies merely as a means of sidestepping NEPA’s requirements” or as “a substitute . . . for

taking affirmative steps to protect natural resources and species.” At the same time, several writers support the principles of adaptive management but counsel agencies not to use it to avoid making final decisions, suggesting that “the public is already faced with agencies’ reticence to make decisions even within the current NEPA land management planning process.”

Many respondents who comment on adaptive management provide suggestions regarding factors the Task Force should consider in relation to its use. Suggested factors to consider include planning issues, funding needs, application of data, risks and uncertainties, effects, resources, monitoring and mitigation, enforceability, project features, new issues, public perceptions, and flexibility.

Additionally, several writers mention various barriers to integrating adaptive management. Some assert that because NEPA is a procedural statute, it precludes agencies from integrating adaptive management into their NEPA analyses. Other perceived barriers include lack of funding, lack of scientific data, practical difficulty in detecting and correcting effects, lack of monitoring mitigation completion, lack of enforceability, public concern over biased decisionmaking, and the lack of a dispute resolution process.

A number of respondents suggest ways for agencies to structure NEPA analysis to consider adaptive management. The suggested methods to fulfill this need are diverse. Many suggestions to incorporate adaptive management into NEPA analysis generally involve the preliminary establishment of a desired outcome and the flexibility to deal with unforeseen circumstances. According to one county commissioner, “Projected outcomes can be specified within the EIS. Alternatives and guidelines to meet changing criteria can easily be described and outlined.” Others suggest that incorporating performance-based environmental parameters into NEPA analysis allows agencies to decide what the end result of an action should be, and subsequently encourages appropriate adaptive management to reach the desired result. Other suggestions include identifying parties responsible for monitoring and mitigation, identifying costs, identifying implementation measures, identifying subsequent reviews, and addressing environmental concerns and effects. A few writers submit examples of effective structuring of NEPA analysis to consider adaptive management.

The issue of subsequent NEPA analysis for adaptive management measures is a topic of concern to several respondents. Many of these writers feel that agencies should be allowed to make adjustments in adaptive management without requiring additional NEPA review. Others comment that “each time an adaptive management requirement is triggered, arguments could be made that the NEPA process should be re-opened.” For the most part, however, respondents support minimizing the need for subsequent analyses to take place. Nonetheless, opinions differ regarding exactly when subsequent NEPA analysis is needed. Some suggest that it is needed when changes are made to the plan, and some feel that additional analysis is needed when there are errors in the effects analysis or when there is new information to consider. Others assert that further analysis is needed when unexpected outcomes or disturbances occur. Additionally, a number of writers believe that subsequent NEPA analysis should be required for “implementation of management actions not identified and evaluated in the original NEPA review, either at the project level or programmatically.”

General Monitoring Techniques and Activities

Respondents who comment about adaptive management often discuss associated monitoring and mitigation issues. A number of writers request the establishment of an effective monitoring and evaluation program for adaptive management. As one respondent states, “Resources should be spent on evaluating actual outcomes and adapting mitigation and proper implementation to actual impacts that occur.” Several writers assert the importance of such a program to collect quality baseline data, to determine whether program objectives are being met, and to establish a basis for appropriate mitigation.

Many respondents who comment on monitoring also provide suggestions regarding the various factors that should be considered when determining monitoring techniques. These factors include legal requirements, planning requirements, funding and staffing requirements, the use of data and analysis, measurability, applicable resources, monitoring requirements, project success, risks and uncertainty, effects of the activity, and public involvement.

The use of mitigation for environmental improvement and analysis reduction is also a topic of concern to a few writers. Some request that the Task Force provide guidance on what constitutes adequate and inadequate mitigation. Others support the use of appropriate mitigation because it enables agencies “to increase the frequency at which EA/FONSI are prepared for actions that would otherwise require an EIS.” These writers encourage mitigation, suggesting that it is a means to prepare documents requiring less analysis. On the other hand, some respondents warn against overreliance on mitigation because “too often . . . agencies have relied on mitigation to conclude that an action will have only minimal, or no, detrimental effects on the environment without providing any mechanism to ensure that the mitigation actually occurs or works the way it was intended.” Similarly, some feel that the Task Force should address the use of “creeping” mitigation to avoid preparing an EIS and suggest agencies use caution in applying too much mitigation.

A few writers also submit several examples of effective adaptive management programs.

Categorical Exclusions

Establishing New Categorical Exclusions

In general, comments about categorical exclusions express a number of polarized views. Some respondents suggest that categorical exclusions are valuable because they assist in streamlining regulatory processes. Others support categorically excluding certain activities but express concern regarding the complexity and cost to implement the exclusion, suggesting that “lengthy and costly analysis defeats the purpose of a CE [categorical exclusion].”

Some respondents believe that the use of categorical exclusions should be limited and carefully considered. They express concern about actions that may have adverse environmental effects, and as a result, some suggest that “rather than support additional categorical exclusions, CEQ should undertake a review of existing agency categorical exclusions and determine whether the individual and cumulative environmental impacts are indeed minimal.” Others assert that agencies should not use categorical exclusions as a means to avoid environmental responsibility or to circumvent NEPA. Several respondents request that the span of categorical exclusions be limited and suggest that, when considering the use of a categorical exclusion, agencies should

consider environmental effects over politics and immediate needs. Some respondents suggest that the Task Force should just eliminate categorical exclusions because NEPA already allows for abbreviated reviews of insignificant actions.

On the other hand, some writers suggest that categorical exclusion regulations should be relaxed and broadened. They encourage the Task Force to ease the process to establish and implement categorical exclusions. There is the perception among some writers that an agency will “avoid taking decisive action it has the authority to take under the categorical exclusion provision.” These writers suggest that agencies should develop and use more categorical exclusion. Many respondents who feel that categorical exclusions should be broadened refer to the concept of extraordinary circumstances. One state agency asserts, “We urge the Task Force to ensure that Extraordinary Circumstances are declared only when warranted and not as an excuse for delay.” Another respondent requests that the new definition of categorical exclusions be emphasized, which allows for categorical exclusions under the Endangered Species Act.

Many respondents who comment on categorical exclusions provide suggestions regarding the basis for establishing new categorical exclusions. Respondents suggest that agencies examine compliance with federal laws and environmental regulations, apply existing data and peer-reviewed science, consider the nature of the proposed action, and consider the effects that the project may have on the environment, society, and the economy.

Some writers suggest that the Task Force should address the inequity between actions that qualify for categorical exclusion and then develop an objective checklist for determining categorical exclusion eligibility. Others submit types of actions they feel are appropriate for categorical exclusion, such as actions implementing decisions that are already made and actions that maintain the status quo. In addition, many respondents indicate specific actions they feel should or should not be categorically excluded. Actions recommended by respondents for categorical exclusion include beneficial management actions (such as noxious weed control), resource development activities (such as small scale timber harvest), resort activities, and low-impact projects. Others assert that specific activities are not suitable for categorical exclusion, especially natural resource development (including timber harvest and mining), and actions having potentially significant effects (including fire projects and pesticide application).

Establishing New Categorical Exclusions through Interagency Review

A number of respondents comment about the idea of establishing new categorical exclusions through interagency review. Several writers encourage agencies to review and apply other agencies’ categorical exclusions. According to one federal agency, “The existence of a valid and applicable categorical exclusion should be sufficient basis for establishing, or adopting, a similar categorical exclusion by the host agency in order to fulfill its related NEPA responsibility.” Those who comment about such interagency review provide many suggestions regarding the appropriate factors to consider. Such factors include local laws and regulations, similarity in agency missions, scientific data, project type, project effects, and the degree of controversy.

Improvements Needed in Establishing New Categorical Exclusions

Respondents identify many improvements needed in the process of establishing new categorical exclusions. For example, one federal agency states that “a mechanism should be considered to allow agencies to adopt categorical exclusions easily.” Several other respondents suggest

improving the process by providing guidance on criteria and agency practices, applying more flexibility, and broadening the use of categorical exclusions.

Some writers suggest that specific changes should be made in the Forest Service Handbook to improve categorical exclusions. Other comments for improving categorical exclusions discuss analysis requirements.

Several respondents express concern regarding the appropriate level of analysis and documentation that should occur when establishing or implementing a categorical exclusion. One respondent states, “Similar to the information required for an EA or EIS, the agencies should have substantial scientific information available that supports its conclusion that a categorical exclusion is appropriate for the type of activity proposed.” On the other hand, one local agency submits that “in most cases, studies are not and should not be required to establish that an action can be categorically excluded.”

A few writers assert that it is important to maintain public involvement in categorical exclusions. Some request that agencies involve the public and stakeholders in developing new categorical exclusions, while others advise agencies not to apply categorical exclusions as a means to avoid public participation.